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The Supreme Court of the United States

STERLING P. HARRIS, ADMINISTRATOR OF THE ESTATE OF ANNA L. HARRIS, DECEASED, Petitioner,

vs.

ZION'S SAVINGS BANK & TRUST COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

Brief for Petitioner on the Merits

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REFERENCE TO THE OFFICIAL REPORT

The case was decided by the Supreme Court of the State of Utah on September 13, 1940, (R. 24). The opinion of the Court has not been officially reported, but may be found in 105 P. (2d) 461.

CLAIMS AND RULINGS OF THE LOWER COURT

Anna L. Harris filed a petition in the United States District Court for relief under Section 75 of the Bankruptcy Act (11 U.S.C.A., Sec. 203) and died while the proceeding was pending. The Court made an order abating the pro-

ceeding because of the death of the debtor. Sterling P. Harris, her husband, was made administrator of her estate.

Zion's Savings Bank & Trust Company then brought suit to foreclose a mortgage upon the farm property scheduled in the debtor relief proceeding and the property was sold under judgment of foreclosure, made and given in the State Court. Before the period of redemption expired, the administrator filed a petition in the probate court for an order authorizing him to revive and reinstate the proceedings under Section 75. The probate court made an order authorizing him to revive the proceeding, or to institute a new proceeding.

An appeal was taken to the Supreme Court of the State of Utah and the order of the probate court was set aside; the Court holding that the probate court was not authorized by State statute to make the order. (R. 11).

STATUTORY PROVISIONS SUPPORTING JURISDICTION

Section 75 (c) (Appendix 1) provides that any farmer may file a petition with the clerk of the federal court for relief under Section 75 of the Bankruptcy Act.

Subsection (n) (App. 2) provides that the filing of the petition shall immediately subject the farmer and all of his property to the exclusive jurisdiction of the court and further (App. 3) that except as otherwise provided in the Act, the jurisdiction and powers of the court shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication entered.

Section 8 of the Bankruptcy Act, 11 U. S. C. A., Section 26, (App. 4) specifically provides:

> "The death, or insanity of a bankrupt shall not abate the proceedings, but the same shall be con-

ducted and concluded in the same manner so far as possible as though he had not died or become insane."

Subsection (r) of Section 75 (App. 5) provides that for the purposes of the section, the term "farmer" "includes the personal representative of a deceased farmer."

It was and is contended that the administrator, under the statutes cited, had a right to invoke the jurisdiction of the Federal Court and to enjoy all the rights, privileges and immunities provided for a farmer under Section 75 of the Bankruptcy Act.

Section 237, (b) of the Judicial Code, 28 U. S. C. A. 344 (b), provides:

"It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, . . . any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States . . . or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of . . . the United States." (App. 6).

It is under these statutory provisions that the jurisdiction of this Court is invoked.

Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370; 60 S. Ct. 733.

STATEMENT OF THE CASE

On February 10th, Sterling P. Harris, as administrator of the Estate of Anna L. Harris, deceased, filed a petition in the probate court for Salt Lake County, State of Utah,

for an order authorizing him to apply to the United States District Court for the revival and reinstatement of a proceeding pending in that Court under Section 75 of the Bankruptcy Act at the time of the death of Anna L. Harris.

On February 13, 1940, the probate court made a finding after notice and hearing, that a proceeding instituted by the deceased was pending in the District Court of the United States for the District of Utah under Section 75 of the Bankruptcy Act; that said proceeding was abated by an order of the said Court in January, 1939; that a suit was commenced for the foreclosure of a mortgage upon the farm lands of the deceased and a certificate of sale had been issued on August 15, 1939; that the period of redemption would expire February 15, 1940, and that no redemption had been made. Upon these findings, the Court made and entered an order authorizing the administrator to apply to the United States District Court for an order reviving and reinstating the debtor relief proceeding pending at the time of the death of Anna L. Harris, or to institute a new proceeding in said Court, as advised. (R. 2, 3).

An appeal was taken by the bank to the Supreme Court of the State of Utah and the error assigned was the making and entering of the order. The Supreme Court filed an opinion and entered judgment on September 13, 1940, (R. 5), vacating and setting aside the order of the probate court in its entirety. The Utah Court based its judgment upon the absence of authority in the Probate Code of Utah to resort to the "Frazier-Lemke" Act. We quote:

> "Our Probate Code nowhere authorizes an administrator to resort to the Frazier-Lemke Act nor does it permit the probate court to authorize him to do so. Neither the administrator nor the probate court has any power, express or implied, to permit one to carry the estate out of the power of the probate court or the latter to divest itself of jurisdiction and permit the estate and its officer to become subject to another tribunal from which neither may be reclaimed." (R. 11).

ASSIGNMENTS OF ERROR

We assign as error, the judgment of the Supreme Court of Utah for the following reasons:

(a) That the Constitution of the United States, Article I, Section 8, authorizes Congress to establish "uniform laws on the subject of Bankruptcy throughout the United States," and Congress, by Section 75 of the Bankruptcy Act has expressly authorized farmers to file a petition under Section 75 of the Bankruptcy Act and the personal representative of a deceased farmer is a farmer.

(b) There is no power in the State Court to prohibit an administrator from pursuing the proceeding under Section 75 (n) (App. 2) of the Bankruptcy Act, pending at the death of the debtor.

(c) A State may not by failing to enact appropriate legislation, deprive a person in a class entitled to relief afforded by the Bankruptcy Act, of the benefits and privileges thereof.

(d) The judgment of the Utah Court, if permitted to stand, is in contravention of the authority of Congress under Article I, Section 8 of the Constitution of the United States to establish "uniform laws on the subject of Bankruptcy throughout the United States."

ARGUMENT

The Supreme Court of Utah, in this case, confuses the Statute 75 (r) (Appendix 5) with General Order 50, Subdivision 9, (App. 13). Obviously the General Order can neither confer nor take away jurisdiction. It must be construed as subordinate to the statute and as limited to the proceedings under Section 75. Subsection (b) of Section 75 reads:

". . . The Supreme Court is authorized to make such general orders as it may find necessary

> properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any District Court of the United States may, for good cause, shown and in the interests of justice, permit any such general order to be waived."

The Utah Court also lost sight of the fundamental proposition that the Constitution and laws of the United States are the Supreme Law of the land. It says:

> "The source of the administrator's power and that of the probate court must be found in the Probate Code. Nowhere in the Probate Code is there any power expressed authorizing an administrator to resort to the Frazier-Lemke Act or permitting the probate court to authorize him to do so." (R. 6-7).

The Constitutional requirement that bankruptcy laws be uniform, would prohibit the States from limiting the application of the law by requiring the consent of the probate court.

> Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370; 60 S. Ct. 733.
>
> Hines v. Lowrey, 305 U. S. 85; 83 L. Ed. 56.

To be uniform the laws must be available to the representatives of the deceased farmer in all States alike. We see no difference between representatives of deceased farmers and private corporations in this regard. If a State may, by failing to enact appropriate legislation, deny to such personal representatives the benefits of the Bankruptcy Act, it may deny the right to corporations or any other entity created by the State to file.

Furthermore, the Utah Court seems to have lost sight of the Utah statutes, for it is specifically provided in

> Section 104-3-19, Revised Statutes of Utah, 1933, (App. 7) that,
>
> "An action or proceeding does not abate by the death or disability of a party,"

and wholly ignored Section 8, (App. 4) of the Bankruptcy Act, which provides that death "shall not abate the proceedings," and exempt property at least is dealt with "to the exclusion of his personal representative." The administrator must take possession of all of the real and personal estate, Section 102-11-3, Revised Statutes of Utah, 1933, (App. 8); his possession is the possession of the heirs for the purpose of bringing suits, etc. Section 102-11-4, (App. 9); he must prosecute suits for the recovery of assets, Section 102-11-13, (App. 10); he may compromise with debtors with the approval of the Court, Section 102-11-12, (App. 11) and he may sue and he may be sued, Section 102-11-5 (App. 12).

The Constitutionality of the statute was not attacked, and while we find no decision of this Court specificially passing upon the power of Congress to include in the definition of a farmer, a personal representative, and permitting him without action of the State to invoke the jurisdiction of the District Court, this Court has uniformly upheld statutes which authorize creatures of the State to file voluntary petitions in bankruptcy. Private corporations may file voluntary or involuntary petitions and no one would be heard to argue to the contrary. Even taxing agents of the State are authorized to file petitions under Section 77B of the Bankruptcy Act, but inasmuch as the Act requires as a condition precedent the consent of the State, the decisions of this Court, as in

> United States v. Beekins, 304 U. S. 27; 82 L. Ed. 1137, are not helpful.

We find no decision of this Court precisely or even closely in point on the question of consent. However, the dissenting opinion by Justice Cardoza in

> Chicago Title & Trust Company v. Forty-One Thirty-Six Wilcox Building Corporation, 302 U. S. 120; 82 L.Ed. 154,

is helpful, in that it suggests a line of reasoning, which if followed, must lead to the conclusion that in matters of

bankruptcy the Constitution and statutes of the United States must prevail over inhibitions and restrictions of State statutes and decisions. In the case cited, the majority of the Court held that a corporation, after a decree of the State Court dissolving it had been entered, was without power to initiate a proceeding under Section 77b of the Bankruptcy Act, notwithstanding the State statute continued the corporate existence for the purposes only of collecting debts due the corporation and selling and conveying its property. In the dissenting opinion by Justice Cardoza, concurred in by Justices Stone and Black, it is said:

> "Here the State has elected to keep the corporation in existence, maimed but still alive. In choosing to create or continue an artificial entity, though with limited and narrow powers, the State subjects its creature to the bankruptcy power of the Congress insofar as that power is directed at juristic beings of that order. Congress has said to Illinois: 'If an association with any corporate capacities exists under your laws, bankruptcy — either voluntary or involuntary — is a proper form of liquidation.' To this the State responds, or is figured as responding: 'An association with corporate capacities does exist under our laws, but it may not go into a court of bankruptcy because we will not give it the capacity to go there. Winding up proceedings for one in its position are in the State tribunals only.' The response, even if taken to be authentic, must be held of no avail. It is not within the competence of Illinois, by any form of words, to preserve the artificial entity for a purpose of her own and destroy it for the purpose of withdrawal from the supremacy of federal law." (302 U. S. 131).

In Hines v. Farkas, 109 F. (2d) 289,
the Circuit Court of Appeals of the Fifth Circuit had under consideration, the question as to whether a special administrator was a personal representative within the purview of Section 75 of the Bankruptcy Act, and finding that it was, considered the question as to whether any administrator had the power to invoke the statute. It referred to the statutes of Georgia, not essentially differing from the Utah statutes, and concluded that the administrator had the power. The Court referred to two district court cases,

In Re Buxton's Estate, (D. C.), 14 F. Supp. 617,
and

In Re Reynolds, (D. C.), 21 F. Supp. 369,
but refused to follow them.

In the instant case, by the action of Anna L. Harris, the jurisdiction of the Federal Court was invoked and that jurisdiction existed over the property at the time of her death. The legal situation with respect to the property was not at all different from what it would have been had she filed a petition in voluntary bankruptcy. Subsection (n), (App. 2) so provides, and that being the case, Section 8 of the Bankruptcy Act, (App. 4) in express terms prohibited the relinquishment of the judisdiction of the Federal Court over that property, and as to exempt property, expressly excludes the personal representative. No one, it is thought, could or would contend that Congress was without power to continue the jurisdiction over the res for the purposes of an orderly closing of an estate. The Supreme Court of Utah hurdles this proposition by totally ignoring it. The direct and inevitable result of the opinion of the Court is that the jurisdiction of the Federal Court over the property of the deceased, no matter what the complications may be in the administration of the estate, terminates instantly and the jurisdiction of the State court attaches to the exclusion of the Federal Court upon the appointment and qualification of the personal